IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 4263 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE M.S. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SAKRABHAI BUCHABHAI

VERSUS

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR YN OZA for the Petitioners

MR PRASHANT G DESAI for Respondent No.1

MR MB GANDHI for Respondent No.2

CORAM : MR JUSTICE M.S. SHAH

Date of Decision : 14/08/2001

C.A.V. JUDGMENT

In this petition under Article 226 of the Constitution, the petitioners, 52 in number, have challenged the eviction notices dated 20-2-1998 (Annexure B) issued by the Ahmedabad Municipal

Corporation-respondent No.1 herein (hereinafter referred to as `the Corporation') and to restrain the respondent-Corporation and its Officers from removing and/or demolishing the hutments of the petitioners situated in land bearing Survey No.118, Final Plot No.200 of Town Planning Scheme No.8 of the city of Ahmedabad (known as Tadiyapura, Motilal Narandas Chali, Opp. Civil Hospital, Asarwa, Ahmedabad). The petitioners have also prayed for a writ of mandamus to direct the respondent-Corporation to allot plots of land out of the abovenumbered land at the price at which the land is given to respondent No.2- Gandhinagar Cooperative Housing Society Ltd. (hereinafter referred to as `the second respondent or Society) and in the alternative, to allot any other suitable land to the petitioners.

2. The petitioners case is that for the last 22 years i.e. since 1976-77, the petitioners have been residing in hutments put up by the petitioners on the aforesaid land without any disturbance. The petitioners are poor persons belonging to Patni-Vaghri community (which is a socially and educationally backward class). However, on 20-2-1998, the Estate Department of the Corporation issued notices to the petitioners stating that as per the town planning scheme, 100 ft. wide road is to be prepared and out of Final Plot No.200, land is to be given to Gandhinagar Cooperative Housing Society Ltd. (respondent-Society) and that, therefore, the petitioners were required to remove their hutments. Upon receiving the notice, the petitioners made inquiries and the petitioners came to learn that 60% of Final Plot No.200 has been allotted to the respondent-Society whose members also belong to Vaghri community i.e. the same community to which the petitioners belong. The petitioners also came to learn that the respondent-Society had originally enrolled only 65 members but at present the number of members has gone upto 250. The petitioners requested the respondent-Corporation that either the petitioners may be taken as members of the respondent-Society or the petitioners may be allotted the said land at the same rate at which the land is allotted to the respondent-Society. The petitioners requested in the alternative that the petitioners who have formed a housing cooperative society called "Ambawadi Matanagar Cooperative Housing Society (proposed) may be given the land out of the remaining 40% of the land of Final Plot No.200 at the same rate at which 60% land is given to the respondent-Society.

3. The petitioners have stated that the petitioners' hutments are situated very far away from the proposed road and that widening of the road does not require removal of the petitioners' hutments but alleged that according to the petitioners' information, the respondent-Corporation is desirous of taking away the land on which the petitioners hutments are situated with a view to selling it at a very high price to private party for constructing a shopping complex similar to another complex called "Shree Ram Market" which is already constructed. The petitioners have made a grievance about violation of their fundamental rights contained in Articles 14, 19 and 21 of the Constitution.

4. While issuing notice on 31-5-1998, this Court granted ad-interim relief staying the implementation of the eviction notice dated 20-2-1998 (Annexure B) and restraining the respondent-Corporation and its officers from removing and/or demolishing the hutments of the petitioners situated on the above land till alternative land is allotted to the petitioners. The above ad-interim injunction was granted on condition that the petitioners shall file an undertaking that in case they fail, they shall pay use and occupation charges to the respondent-Corporation as may be fixed by the Court. The undertakings were accordingly filed on 8-6-1998.

5. In response to the notice, affidavit-in-reply has been filed by Mr. R.R. Varasani, Dy. Municipal Commissioner stating as under:

5.1 The Corporation had carried out a survey of hutment dwellers in the year 1976 and Resolution dated 15-9-1976 came to be passed by the Corporation to the effect that those hutment dwellers who were in occupation of hutments prior to 1-5-1976 will be eligible for getting alternative accommodation while being evicted. The other trespassers, therefore, have to be removed from illegal occupation of the land.

5.2 The respondent-Society filed Special Civil Application No.3723/87 before this Court challenging apprehended eviction of the members of the Society from the same land which is the subject matter of the present petition. For the said land, the Standing Committee of the Corporation passed Resolution No.364 dated 25-9-1992 to the effect that after carving out the land for town planning road, 40% of the remaining land be reserved for the purpose of alternative accommodation

for the other eligible hutment dwellers in future and remaining 60% of land be allotted to the eligible members of the respondent-Society by sale.

5.3 Apprehending that the Corporation was likely to review the above resolution and to deprive the Society of the land which was to be allotted to the Society as per the aforesaid resolution dated 25-9-1992, the Society (respondent No.4) herein moved amendment to that petition. The said petition came to be partly allowed by the judgment dated 22-11-1995 (Annexure I). The statement made on behalf of the Corporation was recorded to the effect that the Corporation did not want to disturb any of the hutments occupied by any of the members of the Society (the respondent-Society in the present petition) from out of 60% of plot No.200 after deducting the land required for the road line and therefore, the main apprehension on the part of the Society did not survive. The Court directed that it was open to the Corporation to utilise the remaining 40% land in question for the purpose of giving alternative accommodation to other hutment dwellers of the city of Ahmedabad and it was also open to the Corporation to remove the trespassers who were not the members of the Society (the respondent-Society in this petition).

5.4 The respondent-Society thereafter filed Misc. Civil Application No.2355 of 1997 for contempt on account of non-implementation of the aforesaid order. The Standing Committee of the Corporation thereupon passed Resolution dated 15-4-1998 resolving that out of the land admeasuring 12,882 sq.yds. of Final Plot No.200 in the above T.P. scheme, after deducting the area required for the T.P. road, 60% of the land be sold to the respondent-Society and 40% of the land be given for alternative accommodation to the other hutment dwellers as per the previous Resolution dated 25-9-1992. However, since the earlier resolution had not made any reference to sale price, the Standing Committee fixed the price of the land after (deducting the area for T.P. road) at Rs.1,93,710/- and the respondent-Society was required to deposit 60% of the said amount with 6% interest from 15-9-1976 till the date of payment. The respondent-Society has accordingly paid Rs.2,67,715/to the Corporation on 30-5-1998.

5.5 It is, therefore, submitted that the petitioners who have put up the hutments on the land bearing Final Plot No.200 are required to be removed from the said land as they were not in possession of the hutments

before 1-5-1976 and therefore, not eligible to get alternative accommodation. The petitioners' case that they have been residing on the land in question since last 22 years has been denied. The economic status and community of the petitioners are not admitted. It is stated that the Corporation had issued identity cards to the eligible hutment dwellers who were in occupation of the hutments before 1-5-1976 but the petitioners having occupied the hutments after 1-5-1976, the petitioners were trespassers and were not given any identity card and they were not entitled to any alternative accommodation. Since the petitioners are not eligible for alternative accommodation, the petitioners cannot be given any land out of the 40% of the land in Final Plot No.200. The allegations about the intention of the Corporation to sell the land in question at a very high price to a private party for constructing a shopping complex are denied. It is also denied that the Corporation has constructed any shopping complex named as "Shree Ram Market" as alleged.

5.6 It is further stated in paragraph 22 of the reply affidavit that the Corporation being a local body has limited resources for providing basic amenities to its citizens and for betterment of citizens. As per Survey & Records of the Corporation, the Corporation has to allot alternative accommodation to about 80,000 to 82,000 eligible hutment dwellers who were in occupation of hutments before 1-5-1976. Hence, the Corporation is not in a position to allot alternative accommodation to the petitioners.

6. Affidavit-in-reply has also been filed by the Secretary of respondent No.2-Society. It is stated that initially the entire land bearing Final Plot No.200 in Asarwa (originally admeasuring 13794 sq. yds.. but 12882 sq. yds. after deducting the land for road) was to be given to the respondent-Society. However, the Corporation earmarked 40% land for the purpose of accommodating other landless persons. Hence, the Society agreed to take 60% of the land. It is stated that as per the report made by the Collector on 4-2-1998, 80 persons who are members of the petitioner-Society were the tenants of the Corporation on the land in question and others whose hutments were removed by the Corporation had again trespassed and put up kachcha constructions and, therefore, those encroachers had no right upon the land in question. In para-9 of the said reply affidavit, a clarification is given about the location of the land and it is submitted that all the petitioners are not residing on the land in

question but they are residing elsewhere. It is stated that the present petitioners are mere encroachers.

7. Affidavit-in-rejoinder is filed on behalf of the petitioners. The petitioners have also referred to and relied upon the affidavit-in-reply filed by Mr. P.S. Patel, Dy. Estate Office of the respondent-Corporation in Special Civil Application No.3723 of 1987 and also affidavit-in-sur-rejoinder filed by Mr. R.A. Shelat, Dy. Estate Officer of the respondent-Corporation in the said petition. It is contended that the stand taken in the aforesaid reply affidavit and sur-rejoinder affidavit in Special Civil Application No.3723 of 1987 was that the Corporation was inclined to reconsider the issue about allotment of land to the Society (respondent No.2 herein) which was the petitioner in Special Civil Application No.3723 of 1987.

8. At the hearing of this petition, Mr. Y.N. Oza, learned counsel for the petitioner has vehemently submitted that the petitioners who have been residing in the hutments on the land in question for the last about 25 years are sought to be evicted for the purpose of accommodating the members of the respondent -Society. It is submitted that since all the members of the respondent-Society were not occupying the hutments on the land in question prior to 1-5-1976 (as even according to the respondent-Society only about 80 members of the respondent-Society were occupying hutments on the land in question in the year 1988), the respondent-Society cannot be given even 60% of the land in question (Final Plot No.200) for the purpose of accommodating the members other than those 80 members.

9. On the other hand, Mr. Prashant G. Desai, learned counsel for the respondent-Corporation and Mr. M.B. Gandhi, learned counsel for respondent No.2-Society have opposed the petition and submitted that the petitioners, being trespassers on the land in question after 1-5-1976, have no right to continue to occupy the land in question or to get any alternative accommodation. It is submitted that the allotment to respondent No.2-Society was made as far back as in the year 1981 vide Corporation's resolution No.1179 dated 29-12-1981. The said resolution was again confirmed by General Board's Resolution No.617 dated 10-1-1986. The only hitch at that time was that the permission was to be obtained from the State Government because the land in question was acquired for some slum clearance housing project. In view of the correspondence between the Corporation and the State Government considerable time

elapsed. However, the Corporation never cancelled its resolutions dated 29-12-1981 and 10-1-1986. It was further submitted that earlier the only ground on which the Standing Committee of the Corporation was thinking to reconsider the matter was whether the land should be given to the respondent-Society or it should be given to individual hutment dwellers by way of alternative accommodation. However, the respondent-Society filed Special Civil Application No.3723 of 1987 which was allowed by order dated 22-11-1995 (Annexure I referred to in para 5.3 herein above). In the meantime the Corporation passed the aforesaid resolution dated 28-9-1992. Thus, the final decision taken by the Corporation was to give 60% land to the respondent-society and 40% to other hutment dwellers who were registered as hutment dwellers prior to 1-5-1976. It is submitted that there was, therefore, no inconsistency in the stand of the respondent-Corporation.

10. It is further submitted by Mr. Gandhi for the respondent-Society that the members of the respondent-Society are also to be given very small parcels of land and that on account of ad-interim relief operating against the respondents, the Corporation is not in a position to make allotment of land to the respondent-Society and in turn the members of the respondent-Society are suffering as they are not in position to put up any pucca construction on the land in question and they have to continue to occupy the kachcha hutments.

11. Having heard the learned counsel for the parties, it appears to the Court that the petitioners have admittedly failed to prove that they have any legal right to occupy the land in question. Admittedly, the land belongs to the Corporation as the same was earlier acquired for slum clearance purposes and thereafter the land was given to the Corporation. The Corporation has decided to allot 60% of the said land to respondent No.2-Society and the remaining 40% land is to be allotted to other hutment dwellers by way of alternative accommodation. In view of the limited resources of the Corporation, the Corporation has taken a policy decision to give such alternative accommodation to only those hutment dwellers who were occupying the hutments at the relevant site prior to 1-5-1976. As per the affidavit filed on behalf of the Corporation, there are as many as 80,000 to 82,000 hutment dwellers who were in occupation prior to 1-5-1976 and their case has to be given precedence. The petitioners have not been able to show

their occupation at the site in question prior to 1-5-1976. Consequently, the petitioners are not entitled to get any allotment out of 40% of the land meant for other hutment dwellers.

12. The next contention of the petitioners is that since even as per the case of respondent-Society only 80 members of the respondent-Society were occupying hutments at the time of Survey in the year 1988, the respondent-Society cannot be allotted land for other members of the respondent-Society who were not occupying any hutments on the land in question prior to 1-5-1976. There is something to be stated about this contention. For the purposes of this contention, the members of respondent No.2 - Society may be divided into three categories.

(A) Those members of the respondent- Society who were occupying hutments on the land in question prior to 1-5-1976 will have to be allotted the land in question.

(B) Since the policy of the Corporation is to give alternative accommodation to those who were occupying the hutments at any site prior to 1-5-1976, those members of the respondent No.2 - Society who were occupying the hutments elsewhere within the limits of the Ahmedabad Municipal Corporation prior to 1-5-1976 and who were given identity cards by the Corporation cannot be denied allotment of land out of the land bearing Final Plot No.200 i.e. the land which is subject matter of the present petition.

(C) But those members of respondent No.2 -Society who were not occupying hutments at any other site as on 1-5-1976, they stand in a different class.

13. Mr. Gandhi's submission is that even the members of respondent No.2 -Society falling in category (C) cannot be denied any allotment of land out of the land in question, because the allotment is made by the Corporation to the Society and not to any individual members. Secondly, it is submitted that by giving allotment to members in category (C) will only mean smaller parcels of land for the members in categories (A) and (B).

14. From the policy decision of the respondent-Corporation it is obvious that only those who were occupying hutments on any site within the limits of the Ahmedabad Municipal Corporation are to be allotted

the same or alternative land. Ineligible persons cannot, therefore, be allowed to take away the land meant for eligible persons, merely by joining a Cooperative Society or association of eligible persons. AS far as the order dated 22-11-1995 (Annexure I) is concerned, that merely recorded the statement made on behalf of the respondent-Corporation and then directed the Corporation to act accordingly. That decision did not nor did it purport to, regularize the encroachments made on the Corporation land/s after 1-5-1976.

15. This petition is accordingly disposed of in terms of the following directions:

(I) While it is open to the respondents to allot land to the members of respondent No.2-Society who were occupying hutments at any place within the limits of the Ahmedabad Municipal Corporation prior to 1-5-1976 and who were so registered with the respondent-Corporation when the Survey was carried out in the year 1976, and while it will be open to respondent No.2-Society to enrol more members who were occupying the hutments at any site within the limits of the Ahmedabad Municipal Corporation prior to 1-5-1976, the respondent Society shall not be permitted to allot any land to other persons who were not occupying hutments at any site within the limits of Ahmedabad Municipal Corporation prior to 1-5-1976.

(II) The area to be allotted to the above eligible members (and for other common facilities) shall be as per the Corporation's norms under the scheme.

(III) Respondent No.2 -Society shall be allotted the aggregate of the lands to be allotted to its eligible members as per the Corporation's norms and the land earmarked for common facilities as per the Corporation norms, within one month from the date on which respondent No.2-Society submits the above details to the Corporation.

(IV) The Corporation shall be entitled to evict all those persons including the petitioners, from the land bearing Final Plot No.200 in T.P. Scheme No.8 (Asarwa), who were not occupying any hutments at any site within the limits of the Ahmedabad Municipal Corporation on 1-5-1976.

(V) If any land still remains with the Corporation after carrying out the above directions, the same shall be made available for allotment to those who are

eligible for such allotment as per the Corporation scheme.

(VI) In view of the undertaking filed by the petitioners it is directed that if the petitioners do not voluntarily vacate the land in question by 30-9-2001, they shall be liable to be evicted by the Corporation with the help of reasonable force, and they shall also be liable to pay compensation at the rate of Rs.100/- per month per hutment w.e.f. 1-6-1998 (i.e. immediately after the date of the ex-parte order passed by the Court).

16. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is accordingly discharged with no order as to costs.

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